

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, :
and VERIZON COMMUNICATIONS INC., :

Petitioners, :

vs. :

No. 08 CV 427 (LAK)

PATRICIA BROWN, HAROLD P. SCHROER, and :
DAWN M. ZOBRIST, on an individual basis and on :
behalf of others similarly situated, :

Respondents. :
:
-----X

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS'
MOTION TO FILE DOCUMENTS UNDER SEAL**

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Attorneys for Petitioners Cellco Partnership d/b/a
Verizon Wireless and Verizon Communications Inc.

Petitioners Cellco Partnership d/b/a Verizon Wireless and Verizon Communications Inc., through their attorneys, hereby move to file under seal an unredacted copy of the exhibits to the Declaration of Jonathan H. Blavin in Support of Petitioners' Motion to Vacate Class Determination Award. A redacted copy has already been filed for the public record, with redactions made to Exhibits 29, 32, 33, 40, 44 through 51, and 55. The remaining exhibits and the body of the declaration are identical to the redacted, publicly filed copy and to the unredacted copy proposed to be filed under seal.

The decision whether to seal court documents "is one best left to the sound discretion of the trial court" and should be made "in light of the relevant facts and circumstances of the particular case." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978). Although generally the public has a presumptive right to access court documents, this presumption can be rebutted by demonstrating that countervailing interests outweigh the public's right to access. *United States v. Amodeo*, 71 F.3d 1044 (2d Cir. 1995).

Sealing the court records in this case is necessary to ensure that Petitioners are not unfairly deprived of their priority rights. Exhibits 29, 32, 33, 40, 44-51 and 55 to Mr. Blavin's declaration contain highly-confidential, proprietary information relating to Verizon Wireless's finances and business operations. See Declaration of Jonathan H. Blavin in Support of Petitioners' Motion To File Pleadings Under Seal, ¶ 2. These exhibits were designated as confidential in the consolidated arbitration *Brown and Zobrist v. Verizon Wireless*, Nos. 11 494 01274 05 and 11 494 0032 05 (American Arbitration Association), and were accepted as such by the arbitrator. *Id.* ¶ 3. Many of these exhibits contain substantially the same propriety information that was in documents that the court in *In Re Cellphone Termination Fees*, J.C.C.P. 4332 (Cal. Superior Court, Alameda County) approved to be filed under seal. *Id.* ¶ 4.

Verizon Wireless has an overriding interest in protecting this information from public disclosure and will suffer substantial prejudice if the material is not sealed, and the public's interest in such confidential information is marginal. Moreover, Verizon Wireless has narrowly crafted its motion to seal in the least restrictive means possible and has filed with the Court public versions of its papers with limited redactions.

For these reasons, Petitioners respectfully move that the Court grant them leave to file under seal an unredacted copy of the exhibits to the Declaration of Jonathan H. Blavin in Support of Petitioners' Motion to Vacate Class Determination Award.

Dated: New York, New York
February 11, 2008

Respectfully submitted,

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By: /s/ Jeffrey S. Jacobson
Jeffrey S. Jacobson

Attorneys for Petitioners Cellco Partnership d/b/a
Verizon Wireless and Verizon Communications Inc.

CERTIFICATE OF SERVICE

I, Carl Micarelli, a member of the Bar of this Court, certify as follows:

On this 11th day of February 2008, I served the within Notice of Motion to File Documents Under Seal, Declaration of Jonathan H. Blavin in Support of Petitioners' Motion to File Documents Under Seal, and Memorandum of Law in Support of Petitioners' Motion to File Documents Under Seal upon Scott A. Bursor, counsel for the Respondents, by sending a copy by electronic mail to scott@bursor.com, such means of service being an electronic means to which he has consented in writing pursuant to Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure.

Dated: New York, New York
February 11, 2008

A handwritten signature in cursive script, reading "Carl Micarelli", is written above a horizontal line.

Carl Micarelli